

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CARL RUSSELL, pro se,

Plaintiff,  
v.

CIVIL ACTION  
NO. 04-30171-MAP

FRANKLIN COUNTY  
FRANKLIN COUNTY SHERIFF MACDONALD  
FRANKLIN COUNTY SHERIFF'S DEPARTMENT,  
FRANKLIN COUNTY HOUSE OF CORRECTIONS,  
SUPERINTENDENT BYRON,  
DEPUTY SUPERINTENDENT SHEPARD,  
DEPUTY SUPERINTENDENT HILL,  
DEPUTY SUPERINTENDENT FITZPATRICK,  
FRANKLIN COUNTY HOUSE OF CORRECTIONS  
MEDICAL DEPARTMENT  
NURSE MORNINGSTAR, MEDICAL ADMINISTRATOR,  
DEPARTMENT OF HOMELAND SECURITY  
Defendants.

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**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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Pursuant to the provisions of Rule 56 of the Massachusetts Rules of Civil Procedure, the Defendants, Franklin County Sheriff Macdonald, Franklin County Sheriff's Department, Franklin County House of Corrections, Superintendent Byron, Deputy Superintendent Shepard, Deputy Superintendent Hill, Deputy Superintendent Fitzpatrick, Franklin County House of Corrections Medical Department and Nurse Morningstar, Medical Administrator moves this Court to enter summary judgment in their favor because the Plaintiff has failed to state a claim upon which relief can be granted.

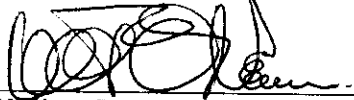
In support of such Motion, the Defendants state that the Plaintiff Carl Russell is no longer a resident of Franklin County House of Corrections. *See Affidavit of Sheriff Macdonald attached.* The Plaintiff is barred from any injunctive relief. *Purvis v. Ponte*, 929 F.2d 822,825 (1st Cir. 1991) (holding that former inmate's action against prison officials was moot because he no longer resided at the prison) *Also see Patrick E. Dullen v. Sheriff Macdonald*, C.A. No. 05-30101-KPN and *Omar Marrero v. Franklin County, et al.*, C.A. No. 04-30230-KPN

Further, insofar as the Plaintiff's suit is brought against the Defendants in their official capacities as state administrators, it is barred under the Eleventh Amendment to the United States Constitution, which proscribes damage suits against states or its officials in their official capacities without their consent. *See Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 634 (1999); *Hans v. Louisiana*, 134 U.S. 1,20 (1890) and *Greenless v. Almond*, 277 F.3d 601, 606-07 (1st Cir. 2002)

WHEREFORE, the Defendants respectfully request that summary judgment be entered in their favor in the above-entitled action as the plaintiff has failed to state a claim upon which relief can be granted.

Respectfully submitted,  
Commonwealth of Massachusetts  
By Its Attorney,

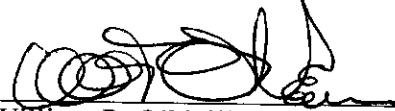
THOMAS F. REILLY  
ATTORNEY GENERAL



William P. O'Neill BBO#379745  
Assistant Attorney General  
Western Massachusetts Division  
1350 Main Street  
Springfield, MA 01103-1629  
(413)784-1240 FAX: 784-1244

#### **CERTIFICATE OF SERVICE**

I, William P. O'Neill, Assistant Attorney General, hereby certify that on September 22, 2005, I served a copy of the foregoing Table of Contents, Affidavit, and a Certificate of Service by first-class Mail, postage prepaid upon plaintiff pro se, at his last known address, Carl Russell, 160 Elm Street, Greenfield, Massachusetts 01301



William P. O'Neill  
Assistant Attorney General

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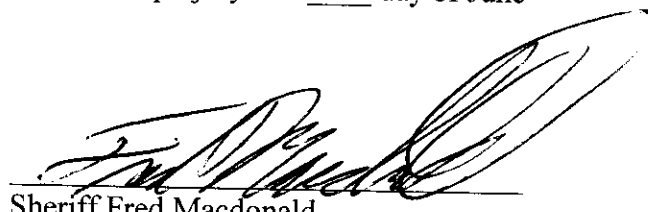
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Defendants.

**AFFIDAVIT OF FRED MACDONALD AS SHERIFF OF FRANKLIN COUNTY HOUSE  
OF CORRECTIONS**

I, Fred McDonald, do hereby depose and state under oath as follows:

1. I am the Sheriff of Franklin County House of Corrections in Franklin County.
2. Carl Russell was incarcerated from March 11, 2004 to March 31, 2005.
3. Mr. Russell is no longer being housed in the Franklin County House of Corrections.

This statement is made under the pains and penalties of perjury this 29<sup>th</sup> day of June  
2005.

  
Sheriff Fred Macdonald  
Franklin County House of Corrections